

## ***Ruling 2004-01***

Vermont Department of Taxes

Dated: January 30, 2004

Written By: Charles Merriman, Attorney for the Department

Approved By: Tom Pelham, Commissioner of Taxes

By email dated January 23, 2004, you requested a ruling “with regard to a transfer of membership interests in an LLC which owns real estate in the State of Vermont, and whether the transfer of said membership interests would trigger the payment of property transfer tax pursuant to 32 V.S.A. Section 9601 et seq.” This ruling relies upon information conveyed in your email request.

### Facts

The <Company> shopping center in <area> is currently owned by <Company 2>, a duly organized Delaware limited liability corporation. The members of <Company 2> are various other entities, including the Sheet Metal Workers Union. <Company 2> owns the <Company> real estate in <area>, as well as a significant amount of personal property leasehold rights, receivables, and other corporate assets. It is the intention of the members of the <Company 2> to convey their membership interests to your clients by assigning these interests.

### Ruling

Vermont imposes a tax upon the transfer by deed of title to property located in the state. 32 V.S.A. § 9602. “Transfer includes a grant, assignment, conveyance, will, trust, decree of court or any other means of transferring title to property or vesting title to property in any person.” 32 V.S.A. § 9601(5). Under Vermont law, the issue is whether the conveyance of a membership interest in an LLC that owns real estate in the state of Vermont constitutes a transfer of title to the property owned by the LLC.

An LLC formed under the Delaware Limited Liability Company Act constitutes a separate legal entity. 6 Del.C. § 18-201(b). “Additionally, the interest of a member in the LLC is analogous to shareholders of a corporation. A member usually contributes personal property and has no interest in specific assets owned by the LLC. 6 Del.C. § 18-701.” *Poore v. Fox Hollow Enterprises*, 1994 WL 150872, (Del.Super.Ct. March 29, 1994).

Because property owned by an LLC is considered the asset of the LLC and not of the individual members, no transfer tax is due upon the transfer of membership interest in

an LLC.<sup>1</sup> This ruling is consistent with 32 V.S.A. § 9618, requiring persons to report stock acquisitions under certain circumstances.

This ruling will be made public after deletion of the parties' names and any information which may identify the parties. A copy of the ruling showing the proposed deletion is attached, and you may request within thirty (30) days that the Commissioner delete any further information which might tend to identify the interested parties. The final discretion as to deletions, however, remains with the Commissioner.

This ruling is issued solely to your business and is limited to the facts presented as affected by current statutes and regulations. Other taxpayers may refer to this ruling to determine the Department's general approach, but the Department will not be bound by this ruling in the case of any other taxpayer or in the case of any change in the relevant statute or regulations.

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<sup>1</sup> In the event of a distribution of LLC realty to a member or to a transferee of a member, a property transfer tax may be due.